IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Bail Appl..No. 4974 of 2007()

[CRIME NO.326/2007 OF HARIPPAD POLICE STATION]

.....

PETITIONER/ACCUSED

PRAMOD, AGED 23 YEARS,
S/O VASAVAN, KANNAMTHERA HOUSE, WARD NO.13,
KUMARAPURAM PANCHAYATH.

BY ADV. SRI.S.SANAL KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4974 of 2007

Dated this the 16th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 306 I.P.C and Section 3(2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The crux of the allegations against the petitioner is that he abetted the commission of suicide by a woman aged about 26 years, a neighbour of his and allegedly his lover. They belong to different communities. It is alleged that a huge amount has been obtained from the deceased by the petitioner. They were in love. The relatives of the petitioner did not relish the relationship between the petitioner and the deceased. They, therefore did not permit him to marry her. He did not show the courage of conviction. After sometime, he also changed his stand. He neither returned the money nor agree to marry her. It is alleged that when she persisted in her request and demands, he allegedly told her that she better commit suicide. In that way, he is alleged to have abetted the commission of suicide. The crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. In fact, the petitioner and his relatives were willing for the marriage. It was the relatives of the girl, who did not agree for the marriage. The petitioner is, in these circumstances, not in any way responsible for the commission of suicide. The father of the deceased allegedly attempted to commit suicide apprehending that she would marry the petitioner, alleges the petitioner. The learned counsel for the petitioner further relies on the fact that the F.I statement did not give a narration of the alleged statement made by the petitioner to the deceased that she could go and commit suicide rather than run after him. In these circumstances, directions under Section 438 Cr.P.C may be issued in favour of the petitioner, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. First of all, the learned Public Prosecutor contends that in addition to the allegation under Section 306 I.P.C, there is an allegation under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and in the light of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, no anticipatory bail can be granted

to the petitioner. The learned Public Prosecutor further submits that in any view of the matter, this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioner. I have considered all the relevant inputs. I reckon the objection under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to be a valid one. Coming to the allegation under Section 306 I.P.C, I am of the opinion that there are no circumstances justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations and the credibility of the data collected. Suffice it to say that in the nature of the controversies, case diary has been called for and perused by me. I have specifically gone through the statements of the father and mother of the deceased who spoke of what the deceased narrated to them of what happened on the previous day. I do not find any features in this case which would justify the invocation of the jurisdiction under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must surrender before the investigating officer or the

learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

5. The learned counsel for the petitioner submits that the mere fact that the allegations have been raised of offences exclusively triable by the court of Session should not deter the learned Magistrate from exercising his jurisdiction under Section 437 Cr.P.C. That position has been clarified time and again by this court. It is unnecessary to issue any specific directions in this regard. Suffice it to say that the application for bail must be considered by the learned Magistrate on merits.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007